



House of Representatives

General Assembly

File No. 551

January Session, 2005

Substitute House Bill No. 6849

House of Representatives, April 27, 2005

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE APPOINTMENT OF TEMPORARY CONSERVATORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-654 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Upon written application for appointment of a temporary
4 conservator brought by any person deemed by the court to have
5 sufficient interest in the welfare of the respondent, including, but not
6 limited to, the spouse or any relative of the respondent, the first
7 selectman, chief executive officer or head of the department of welfare
8 of the town of residence or domicile of any respondent, the
9 Commissioner of Social Services, the board of directors of any
10 charitable organization, as defined in section 21a-190a, or the chief
11 administrative officer of any nonprofit hospital or such officer's
12 designee, the Court of Probate may appoint a temporary conservator
13 [] if [it] the court finds that: (1) The respondent is incapable of

14 managing his or her affairs or incapable of caring for himself or herself,
15 and (2) immediate and irreparable injury to the mental or physical
16 health or financial or legal affairs of the respondent will result if a
17 temporary conservator is not appointed pursuant to this section. The
18 court may, in its discretion, require the temporary conservator to give
19 a probate bond. The court shall limit the duties, responsibilities and
20 powers of the temporary conservator to the circumstances that gave
21 rise to the application and shall make specific findings to justify such
22 limitation. In making such findings, the court shall consider the
23 present and previously expressed wishes of the respondent, the
24 abilities of the respondent, any prior appointment of an attorney-in-
25 fact, health care agent, trustee or other fiduciary acting on behalf of the
26 respondent, any support service otherwise available to the respondent
27 and any other relevant evidence. The temporary conservator shall have
28 charge of the property or of the person of the respondent or both for
29 such period of time or for such specific occasion as the court finds to be
30 necessary, provided a temporary appointment shall not be valid for
31 more than thirty days, unless at any time while the appointment of a
32 temporary conservator is in effect, an application is filed for
33 appointment of a conservator of the person or estate under section 45a-
34 650. The court may (A) extend the appointment of the temporary
35 conservator until the disposition of such application under section 45a-
36 650, or for an additional thirty days, whichever occurs first, or (B)
37 terminate the appointment of a temporary conservator upon a
38 showing that the circumstances that gave rise to the application for
39 appointment of a temporary conservator no longer exist.

40 (b) Except as provided in subsection (e) of this section, an
41 appointment of a temporary conservator shall not be made unless a
42 report is presented to the judge, signed by a physician licensed to
43 practice medicine or surgery in this state, stating: (1) That the
44 physician has examined the respondent and the date of such
45 examination, which shall not be more than three days prior to the date
46 of presentation to the judge; (2) that it is the opinion of the physician
47 that the respondent is incapable of managing his or her affairs or
48 incapable of caring for himself or herself; and (3) the reasons for such

49 opinion. Any physician's report filed with the court pursuant to this
50 subsection shall be confidential. The court may issue an order for the
51 disclosure of the medical information required pursuant to this
52 subsection.

53 (c) [The] (1) If the court determines that the delay resulting from
54 giving notice and appointing an attorney to represent the respondent
55 as required in subsection (d) of this section would cause immediate
56 and irreparable injury to the mental or physical health or financial or
57 legal affairs of the respondent, the court may, ex parte and without
58 prior notice to the respondent, appoint a temporary conservator upon
59 making the findings required [by] in subsection (a) of this section,
60 provided the court makes a specific finding in any decree issued on the
61 application stating the immediate or irreparable injury that formed the
62 basis for the court's determination and why such hearing and
63 appointment was not required.

64 (2) After making such ex parte appointment, the court shall
65 immediately: [(1)] (A) Appoint an attorney to represent the
66 respondent, provided if the respondent is unable to pay for the
67 services of such attorney, the reasonable compensation for such
68 attorney shall be established by, and paid from funds appropriated to,
69 the Judicial Department, [however,] except that if funds have not been
70 included in the budget of the Judicial Department for such purposes,
71 such compensation shall be established by the Probate Court
72 Administrator and paid from the Probate Court Administration Fund;
73 [and (2)] (B) schedule the date, place and time of a hearing to be held
74 not later than seventy-two hours after the issuance of the court's
75 decree, excluding Saturdays, Sundays and holidays; and (C) give
76 notice by mail, or such other notice as the court deems appropriate, to
77 the respondent, the respondent's next of kin and such attorney, which
78 notice shall include: [(A)] (i) A copy of the application for appointment
79 of temporary conservator and the accompanying physician's report;
80 [and (B)] (ii) a copy of the decree appointing a temporary conservator;
81 [. If] and (iii) the date, place and time of the hearing scheduled
82 pursuant to subparagraph (B) of this subdivision, except that if the

83 court determines that notice to the respondent under this [subsection]
84 subdivision would be detrimental to the health or welfare of the
85 respondent, the court may give such notice only to the respondent's
86 next of kin and the respondent's attorney. [Thereafter, the court shall,
87 upon the written request of the respondent, the respondent's next of
88 kin or the respondent's attorney, or may upon its own motion, hold a
89 hearing. Such hearing shall be held within seventy-two hours of
90 receipt of such request, excluding Saturdays, Sundays and holidays,
91 and upon such notice as the court deems appropriate.]

92 (3) After such hearing, the court [may] shall confirm or revoke the
93 appointment of the temporary conservator or may modify the duties,
94 responsibilities or powers assigned under such appointment.

95 (d) If the court determines that an ex parte appointment of a
96 temporary conservator pursuant to subsection (c) of this section is not
97 appropriate but finds substantial evidence that appointment of a
98 temporary conservator may be necessary, the court shall hold a
99 hearing on the application. Unless continued by the court for cause,
100 such hearing shall be held [within] not later than seventy-two hours
101 [of] after receipt of the application, excluding Saturdays, Sundays and
102 holidays. Prior to such hearing, the court shall appoint an attorney to
103 represent the respondent in accordance with subsection (c) of this
104 section and shall give such notice as it deems appropriate to the
105 respondent, the respondent's next of kin and such attorney, which
106 notice shall include a copy of the application for appointment of a
107 temporary conservator and the accompanying physician's report. After
108 hearing and upon making the findings required [by] in subsection (a)
109 of this section, the court may appoint a temporary conservator.

110 (e) The court may waive the medical evidence requirement under
111 subsection (b) of this section if the court finds that the evidence is
112 impossible to obtain because of the refusal of the respondent to be
113 examined by a physician. In any such case the court may, in lieu of
114 medical evidence, accept other competent evidence. In any case in
115 which the court waives the requirement of medical evidence as

116 provided in this subsection, the court shall (1) make a specific finding
117 in any decree issued on the application stating why medical evidence
118 was not required, and (2) [if a hearing has not been held,] schedule a
119 hearing [under] in accordance with subsection (c) or (d) of this section,
120 which hearing shall take place [within] not later than seventy-two
121 hours [of] after the issuance of the court's decree.

122 (f) Except as provided in subsection (g) of this section, a temporary
123 conservator may not change the respondent's residence unless a court
124 specifically finds, after a hearing, that such change is necessary.

125 (g) (1) If the temporary conservator determines it is necessary to
126 cause the respondent to be placed in an institution for long-term care,
127 the temporary conservator may make such placement after the
128 temporary conservator files a report of such intended placement with
129 the probate court that appointed the temporary conservator, except
130 that if the placement results from the respondent's discharge from a
131 hospital or if irreparable injury to the mental or physical health or
132 financial or legal affairs of the respondent would result from filing the
133 report before making such placement, the temporary conservator may
134 make the placement before filing the report provided the temporary
135 conservator (A) files the report not later than five days after making
136 such placement, and (B) includes in the report a statement as to the
137 hospital discharge or a description of the irreparable injury that the
138 placement averted.

139 (2) The report shall set forth the basis for the temporary
140 conservator's determination, what community resources have been
141 considered to avoid the placement, and the reasons why the
142 respondent's physical, mental and psychosocial needs cannot be met in
143 a less restrictive and more integrated setting. Such community
144 resources include, but are not limited to, resources provided by the
145 area agencies on aging, the Department of Social Services, the Office of
146 Protection and Advocacy for Persons with Disabilities, the Department
147 of Mental Health and Addiction Services, the Department of Mental
148 Retardation, any center for independent living, as defined in section

149 17b-613, or any congregate or subsidized housing. The temporary
150 conservator shall give notice of the placement and a copy of such
151 report to the respondent and any other interested parties as
152 determined by the court.

153 (3) Upon the request of the respondent or such interested party, the
154 court shall hold a hearing on the report and placement not later than
155 thirty days after the date of the request. The court may also, in its
156 discretion, hold a hearing on the report and placement in any case
157 where no request is made for a hearing. If the court, after such hearing,
158 determines that the respondent's physical, mental and psychosocial
159 needs can be met in a less restrictive and more integrated setting
160 within the limitations of the resources available to the respondent,
161 either through the respondent's own estate or through private or
162 public assistance, the court shall order that the respondent be placed
163 and maintained in such setting.

164 (4) For purposes of this subsection, an "institution for long-term
165 care" means a facility that has been federally certified as a skilled
166 nursing facility or intermediate care facility.

167 [(f)] (h) [On] Upon the termination of the temporary
168 conservatorship, the temporary conservator shall file a written report
169 with the court of his or her actions as temporary conservator.

170 Sec. 2. Subsection (c) of section 45a-644 of the general statutes is
171 repealed and the following is substituted in lieu thereof (*Effective*
172 *October 1, 2005*):

173 (c) "Incapable of caring for one's self" or "incapable of caring for
174 himself or herself" means a mental, emotional or physical condition
175 resulting from mental illness, mental deficiency, physical illness or
176 disability, chronic use of drugs or alcohol, or confinement, which
177 results in the person's inability to provide medical care for physical
178 and mental health needs, nutritious meals, clothing, safe and
179 adequately heated and ventilated shelter, personal hygiene and
180 protection from physical abuse or harm and which results in

181 endangerment to such person's health.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	45a-654
Sec. 2	<i>October 1, 2005</i>	45a-644(c)

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Probate Court	PCAF - Revenue Gain	Minimal	Minimal

Note: PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill increases the number of hearings related to temporary conservator actions, and is anticipated to result in a minimal revenue gain for the Probate Court Administration Fund. It is estimated that 800 temporary conservatorships are granted annually.

The bill requires that if the temporary conservator wishes to change the address of the respondent, or place them in a long-term care facility, the court must hold an additional hearing. For each additional hearing, the petitioner must file an application fee of \$150 to the Probate Court, which will result in additional revenue. The extent of the revenue gain is dependent on the number of hearings that are held, which is unknown at this time, but is anticipated to be minimal.

OLR Bill Analysis

sHB 6849

AN ACT CONCERNING THE APPOINTMENT OF TEMPORARY CONSERVATORS**SUMMARY:**

This bill restricts the powers of temporary conservators and requires additional court oversight of their activities. It restricts the probate court's authority to appoint them and requires it to hold a hearing within 72 hours of making an ex parte (without advance notice and a hearing) appointment. By law, interested parties may file applications with the probate court, accompanied by medical documentation, to place people unable to take care of their own financial or health care needs under conservatorship. Temporary conservators are appointed in cases involving potential irreparable harm. They serve for up to 60 days or until a permanent conservator is appointed, whichever occurs first.

EFFECTIVE DATE: Upon passage

BASIS FOR APPOINTMENT

The bill adds a requirement that the risk of irreparable harm to a person needing a temporary conservator be immediate. It requires the probate court to limit the temporary conservator's powers to the circumstances that gave rise to the application and to make specific findings to justify these limitations. In doing so, it must consider (1) the present and previously expressed wishes of the person being placed under temporary conservatorship (the ward); (2) previous appointments of attorneys-in-fact, health care agents, or other fiduciaries; (3) other support services available to the ward; and (4) other relevant evidence. Current law does not specify matters that the court must consider and permits temporary conservators to continue to act on the ward's behalf beyond the point when the emergency that gave rise to their appointment has ended (but no longer than 60 days).

Ex Parte Appointments

By law, probate courts may appoint a temporary conservator without

prior notice to the ward and without appointing him legal counsel (ex parte). The bill restricts this procedure to situations in which the court determines that the delay resulting from giving notice and appointing the attorney would cause immediate and irreparable injury to the ward's physical health or financial or legal affairs. It must make a specific finding on the appointment decree stating the injury that formed the basis for its determination and why a hearing with appointed counsel was not required. Otherwise, the court must provide the ward prior notice, an attorney, and a hearing.

When the court makes an ex parte appointment, the bill requires it to hold a hearing within 72 hours, excluding weekends and holidays. It must mail or give other appropriate notice of the hearing to the ward and his next of kin and attorney, and include copies of the application for appointment and physician's report as required under existing law. Current law permits the court to hold such hearings, but requires it only upon written request.

After the hearing, the bill requires the court to confirm or revoke the temporary conservator's appointment, which under current law is permissive. It also permits the court to modify the temporary conservator's assigned duties, responsibilities, or powers.

RESTRICTING TEMPORARY CONSERVATOR'S POWER TO RELOCATE WARD

Except for nursing home placements, the bill allows temporary conservators to relocate their wards only after attending a court hearing and obtaining a court ruling that the relocation is necessary.

Nursing Home Placements

Under the bill, temporary conservators may place wards in nursing homes when necessary. They must first file a report with the probate court that appointed them unless (1) the nursing home admission results from the ward's discharge from a hospital or (2) the ward's health or financial and legal affairs would be irreparably harmed by doing so.

The report must contain the temporary conservator's reasons for choosing a nursing home placement; the community resources he considered to avoid it; and why the ward's physical, mental, and

psychosocial needs cannot be met in a less restrictive and more integrated setting. Under the bill, community resources include services provided the departments of Social Services, Mental Health and Addiction Services, and Mental Retardation; the Office of Protection and Advocacy for Persons with Disabilities; area agencies on aging; independent living centers; and congregate or subsidized housing.

Reports containing the same information must be filed within five days after making an emergency placement. They must also include a statement as to the hospital discharge or a description of the irreparable injury that the placement avoided.

The bill requires the temporary conservator to notify the ward and any other interested parties the court designates of the placement, and to provide copies of his report. If any of the notified parties requests a hearing, the court must hold it no later than 30 days after the request. It can also hold a hearing on its own motion. After the hearing, the court may order the ward placed and maintained in a less restrictive and more integrated setting if it determines that the ward has adequate resources, either from his own estate or through private or public assistance.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0